



US Army Corps  
of Engineers

# Construction Bulletin

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## CEMP-C

**Subject:** Compliance with State and Local Requirements

**Applicability:** INFORMATION

1. **REFERENCE:** ER 1110-1-8152, Engineering and Design Professional Registration, dated 8 August 1995.
2. **PURPOSE.** This Construction Bulletin (CB) addresses state requirements for certification of certain documents generated during the construction/remedial action phase of a project.
3. **BACKGROUND.** Recently, several States have requested that as-built drawings and other construction contract documents relating to Corps landfill and hazardous waste projects be certified by Registered Professional Engineers (PE). The laws of many states have such certification requirements for these types of projects. In one case and under pressure from the state, a PE registered area engineer certified the as-built drawings. The issues addressed by this CB are: (1) can these State certification requirements be imposed upon Government projects; and (2) can States require certification by PEs.
4. **a.** Generally, the Federal Government has "Federal supremacy" which among other things exempts the Federal Government from compliance with state or local requirements except when such supremacy has been waived. The doctrine of federal supremacy does not apply if there has been a clear waiver of Federal supremacy by the Congress. Six environmental statutes relevant to the Corp's work contain waivers of Federal supremacy. These are: the Clean Water Act, Safe Drinking Water Act, Clean Air Act, Noise Control Act, the Resource Conservation and Recovery Act, and the Comprehensive Environmental Response, Compensation, and Liability Act. Determining the scope of a Congressional waiver of Federal supremacy requires determining both the types of state requirements that are specified in the waiver language and the activity to which the statute, and thus the waiver, applies. Accordingly, a careful review must be made on a case-by-case basis, since any particular requirement asserted by a state or local government might or might not bind the Federal Government.

CEMP-CP

SUBJECT: Compliance with State and Local Requirements

b. Paragraphs 9 and 11 of the referenced ER stated that licences and professional registration (in general) are not specified in any of the environmental waivers. Therefore, a state rule requiring licensing of a USACE engineer in that state (or in any state), or requiring execution of documents by a professional engineer licensed in the particular state where the work is located (or in any state), is generally not enforceable by the state against USACE. This is true whether or not the state professional registration statute exempts Federal employees from its requirements. The USACE is, however, obliged to comply with Federal agency requirements, such as the Environmental Protection Agency's (EPA) regulations, which require submission to EPA of certifications signed by registered professional engineers. In order to resolve state specific registration matters, the ER recommends that districts, and operating Major Subordinate Commands (MSCs) convey the USACE commitment to work with each state, while not unduly compromising Federal Supremacy. Districts, operating MSCs, and Centers are encouraged to identify state officials and agencies responsible for environmental and other professional registration matters, and initiate partnering dialogues and build relationships to address such sensitive issues.

## 5. IMPLEMENTATION.

a. If during the construction/remedial action phase of a project, the state requires certification of a particular document that is generated during the construction phase, construction personnel must seek the advice of their local office of counsel. Determinations may be made to comply with the state (or local) requirements for certification of documents for either legal or policy reasons in accordance with the referenced ER. Determining who should certify documents (Government personnel or contractor) should be made on a case-by-case basis.

b. The contractor should certify documents only when it is the party that is in the best position to have the necessary knowledge, such as in the case of as-built drawings. If practicable, the certification requirement should be included in the solicitation and contract.

c. Government construction personnel who certify documents do so as USACE employees. If Government construction personnel certify documents, such responsibility should be included in their job descriptions. The purpose of this requirement is to establish a clear written record that USACE employees who sign or certify documents are doing so within the scope of their employment and specific written authority, and thus are not personally liable.

6. This CB was coordinated with the Office of the Chief Counsel (CECC-C).

  
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